

#### **IC 36-7.5-4**

##### **Chapter 4. Financing; Issuance of Bonds; Leases**

#### **IC 36-7.5-4-1**

##### **Development authority fund; accounts; debt service**

Sec. 1. (a) The development board shall establish and administer a development authority fund.

(b) The development authority fund consists of the following:

(1) Riverboat admissions tax revenue, riverboat wagering tax revenue, or riverboat incentive payments received by a city or county described in IC 36-7.5-2-3(b) and transferred by the county or city to the fund.

(2) County economic development income tax revenue received under IC 6-3.5-7 by a county or city and transferred by the county or city to the fund.

(3) Amounts distributed under IC 8-15-2-14.7.

(4) Food and beverage tax revenue deposited in the fund under IC 6-9-36-8.

(5) Funds received from the federal government.

(6) Appropriations to the fund by the general assembly.

(7) Other local revenue appropriated to the fund by a political subdivision.

(8) Gifts, donations, and grants to the fund.

(c) On the date the development authority issues bonds for any purpose under this article, which are secured in whole or in part by the development authority fund, the development board shall establish and administer two (2) accounts within the development authority fund. The accounts shall be the general account and the lease rental account. After the accounts are established, all money transferred to the development authority fund under subsections (b)(1), (b)(2), and (b)(4) shall be deposited in the lease rental account and used only for the payment of or to secure the payment of obligations of an eligible political subdivision under a lease entered into by an eligible political subdivision and the development authority under this chapter. However, any money deposited in the lease rental account and not used for the purposes of this subsection shall be returned by the treasurer of the development authority to the respective counties and cities that contributed the money to the development authority.

(d) Notwithstanding subsection (c), if the amount of all money transferred to the development authority fund under subsections (b)(1), (b)(2), and (b)(4) for deposit in the lease rental account in any one (1) calendar year is greater than an amount equal to:

(1) one and twenty-five hundredths (1.25); multiplied by

(2) the total of the highest annual debt service on any bonds then outstanding to their final maturity date, which have been issued under this article and are not secured by a lease, plus the highest annual lease payments on any leases to their final maturity, which are then in effect under this article;

then all or a portion of the excess may instead be deposited in the

general account.

(e) All other money and revenues of the development authority may be deposited in the general account or the lease rental account at the discretion of the development board. Money on deposit in the lease rental account may be used only to make rental payments on leases entered into by the development authority under this article. Money on deposit in the general account may be used for any purpose authorized by this article.

(f) The development authority fund shall be administered by the development authority.

(g) Money in the development authority fund shall be used by the development authority to carry out this article and does not revert to any other fund.

*As added by P.L.214-2005, SEC.73.*

### **IC 36-7.5-4-2**

#### **Revenue transfers to fund**

Sec. 2. (a) Beginning in 2006, the fiscal officer of each city and county described in IC 36-7.5-2-3(b) (other than the two (2) largest cities in a county described in IC 36-7.5-2-3(b)(1)) shall each transfer three million five hundred thousand dollars (\$3,500,000) each year to the development authority for deposit in the development authority fund established under section 1 of this chapter.

(b) The following apply to the transfers required by subsection (a):

(1) The transfers shall be made without appropriation by the city or county fiscal body or approval by any other entity.

(2) After December 31, 2005, each fiscal officer shall transfer eight hundred seventy-five thousand dollars (\$875,000) to the development authority fund before the last business day of January, April, July, and October of each year. Food and beverage tax revenue deposited in the fund under IC 6-9-36-8 is in addition to the transfers required by this section.

(3) The transfers shall be made from one (1) or more of the following:

(A) Riverboat admissions tax revenue received by the city or county, riverboat wagering tax revenue received by the city or county, or riverboat incentive payments received from a riverboat licensee by the city or county.

(B) Any county economic development income tax revenue received under IC 6-3.5-7 by the city or county.

(C) Any other local revenue other than property tax revenue received by the city or county.

*As added by P.L.214-2005, SEC.73.*

### **IC 36-7.5-4-3**

#### **Bond issues**

Sec. 3. (a) Subject to subsection (h), the development authority may issue bonds for the purpose of obtaining money to pay the cost of:

- (1) acquiring real or personal property, including existing capital improvements;
  - (2) acquiring, constructing, improving, reconstructing, or renovating one (1) or more projects; or
  - (3) funding or refunding bonds issued under this chapter or IC 8-5-15, IC 8-22-3, IC 36-7-13.5, or IC 36-9-3 or prior law.
- (b) The bonds are payable solely from:
- (1) the lease rentals from the lease of the projects for which the bonds were issued, insurance proceeds, and any other funds pledged or available; and
  - (2) except as otherwise provided by law, revenue received by the development authority and amounts deposited in the development authority fund.
- (c) The bonds shall be authorized by a resolution of the development board.
- (d) The terms and form of the bonds shall either be set out in the resolution or in a form of trust indenture approved by the resolution.
- (e) The bonds shall mature within forty (40) years.
- (f) The board shall sell the bonds only to the Indiana development finance authority established by IC 4-4-11-4 upon the terms determined by the development board and the Indiana development finance authority.
- (g) All money received from any bonds issued under this chapter shall be applied solely to the payment of the cost of acquiring, constructing, improving, reconstructing, or renovating one (1) or more projects, or the cost of refunding or refinancing outstanding bonds, for which the bonds are issued. The cost may include:
- (1) planning and development of equipment or a facility and all buildings, facilities, structures, equipment, and improvements related to the facility;
  - (2) acquisition of a site and clearing and preparing the site for construction;
  - (3) equipment, facilities, structures, and improvements that are necessary or desirable to make the project suitable for use and operations;
  - (4) architectural, engineering, consultant, and attorney's fees;
  - (5) incidental expenses in connection with the issuance and sale of bonds;
  - (6) reserves for principal and interest;
  - (7) interest during construction;
  - (8) financial advisory fees;
  - (9) insurance during construction;
  - (10) municipal bond insurance, debt service reserve insurance, letters of credit, or other credit enhancement; and
  - (11) in the case of refunding or refinancing, payment of the principal of, redemption premiums (if any) for, and interest on, the bonds being refunded or refinanced.
- (h) The development authority may not issue bonds under this article unless the development authority first finds that each contract for the construction of a facility and all buildings, facilities,

structures, and improvements related to that facility to be financed in whole or in part through the issuance of the bonds requires payment of the common construction wage required by IC 5-16-7.

*As added by P.L.214-2005, SEC.73.*

#### **IC 36-7.5-4-4**

##### **Bonding; complete authority**

Sec. 4. This chapter contains full and complete authority for the issuance of bonds. No law, procedure, proceedings, publications, notices, consents, approvals, orders, or acts by the development board or any other officer, department, agency, or instrumentality of the state or of any political subdivision is required to issue any bonds, except as prescribed in this article.

*As added by P.L.214-2005, SEC.73.*

#### **IC 36-7.5-4-5**

##### **Bonding; security; trust indenture**

Sec. 5. (a) The development authority may secure bonds issued under this chapter by a trust indenture between the development authority and a corporate trustee, which may be any trust company or national or state bank within Indiana that has trust powers.

(b) The trust indenture may:

- (1) pledge or assign revenue received by the development authority, amounts deposited in the development authority fund, and lease rentals, receipts, and income from leased projects, but may not mortgage land or projects;
- (2) contain reasonable and proper provisions for protecting and enforcing the rights and remedies of the bondholders, including covenants setting forth the duties of the development authority and development board;
- (3) set forth the rights and remedies of bondholders and trustees; and
- (4) restrict the individual right of action of bondholders.

(c) Any pledge or assignment made by the development authority under this section is valid and binding in accordance with IC 5-1-14-4 from the time that the pledge or assignment is made, against all persons whether they have notice of the lien or not. Any trust indenture by which a pledge is created or an assignment made need not be filed or recorded. The lien is perfected against third parties in accordance with IC 5-1-14-4.

*As added by P.L.214-2005, SEC.73.*

#### **IC 36-7.5-4-6**

##### **Bond refunding; leases**

Sec. 6. (a) Bonds issued under IC 8-5-15, IC 8-22-3, IC 36-7-13.5, or IC 36-9-3 or prior law may be refunded as provided in this section.

(b) An eligible political subdivision may:

- (1) lease all or a portion of land or a project or projects to the development authority, which may be at a nominal lease rental with a lease back to the eligible political subdivision,

conditioned upon the development authority assuming bonds issued under IC 8-5-15, IC 8-22-3, IC 36-7-13.5, or IC 36-9-3 or prior law and issuing its bonds to refund those bonds; and  
(2) sell all or a portion of land or a project or projects to the development authority for a price sufficient to provide for the refunding of those bonds and lease back the land or project or projects from the development authority.

*As added by P.L.214-2005, SEC.73.*

#### **IC 36-7.5-4-7**

##### **Leases; findings**

Sec. 7. (a) Before a lease may be entered into by an eligible political subdivision under this chapter, the eligible political subdivision must find that the lease rental provided for is fair and reasonable.

(b) A lease of land or a project from the development authority to an eligible political subdivision:

- (1) may not have a term exceeding forty (40) years;
- (2) may not require payment of lease rentals for a newly constructed project or for improvements to an existing project until the project or improvements to the project have been completed and are ready for occupancy or use;
- (3) may contain provisions:
  - (A) allowing the eligible political subdivision to continue to operate an existing project until completion of the acquisition, improvements, reconstruction, or renovation of that project or any other project; and
  - (B) requiring payment of lease rentals for land, for an existing project being used, reconstructed, or renovated, or for any other existing project;
- (4) may contain an option to renew the lease for the same or shorter term on the conditions provided in the lease;
- (5) must contain an option for the eligible political subdivision to purchase the project upon the terms stated in the lease during the term of the lease for a price equal to the amount required to pay all indebtedness incurred on account of the project, including indebtedness incurred for the refunding of that indebtedness;
- (6) may be entered into before acquisition or construction of a project;
- (7) may provide that the eligible political subdivision shall agree to:
  - (A) pay any taxes and assessments on the project;
  - (B) maintain insurance on the project for the benefit of the development authority;
  - (C) assume responsibility for utilities, repairs, alterations, and any costs of operation; and
  - (D) pay a deposit or series of deposits to the development authority from any funds legally available to the eligible political subdivision before the commencement of the lease

to secure the performance of the eligible political subdivision's obligations under the lease; and

(8) shall provide that the lease rental payments by the eligible political subdivision shall be made from the development authority fund established by section 1 of this chapter and may provide that the lease rental payments by the eligible political subdivision shall be made from:

(A) net revenues of the project;

(B) any other funds available to the eligible political subdivision; or

(C) both sources described in clauses (A) and (B).

*As added by P.L.214-2005, SEC.73.*

#### **IC 36-7.5-4-8**

##### **Leases; complete authority**

Sec. 8. This chapter contains full and complete authority for leases between the development authority and an eligible political subdivision. No law, procedure, proceedings, publications, notices, consents, approvals, orders, or acts by the development authority or the eligible political subdivision or any other officer, department, agency, or instrumentality of the state or any political subdivision is required to enter into any lease, except as prescribed in this article.

*As added by P.L.214-2005, SEC.73.*

#### **IC 36-7.5-4-9**

##### **Plans; approval**

Sec. 9. If the lease provides for a project or improvements to a project to be constructed by the development authority, the plans and specifications shall be submitted to and approved by all agencies designated by law to pass on plans and specifications for public buildings.

*As added by P.L.214-2005, SEC.73.*

#### **IC 36-7.5-4-10**

##### **Agreements; common wall; easements; licenses**

Sec. 10. The development authority and an eligible political subdivision may enter into common wall (party wall) agreements or other agreements concerning easements or licenses. These agreements shall be recorded with the recorder of the county in which the project is located.

*As added by P.L.214-2005, SEC.73.*

#### **IC 36-7.5-4-11**

##### **Leases or sale of projects or land to authority**

Sec. 11. (a) An eligible political subdivision may lease for a nominal lease rental, or sell to the development authority, one (1) or more projects or portions of a project or land upon which a project is located or is to be constructed.

(b) Any lease of all or a portion of a project by an eligible political subdivision to the development authority must be for a term

equal to the term of the lease of that project back to the eligible political subdivision.

(c) An eligible political subdivision may sell property to the development authority for the amount the eligible political subdivision determines to be in the best interest of the eligible political subdivision. The development authority may pay that amount from the proceeds of bonds of the development authority.

*As added by P.L.214-2005, SEC.73.*

#### **IC 36-7.5-4-12**

##### **Option to purchase property**

Sec. 12. If an eligible political subdivision exercises its option to purchase leased property, the eligible political subdivision may issue its bonds as authorized by statute.

*As added by P.L.214-2005, SEC.73.*

#### **IC 36-7.5-4-13**

##### **Tax exemption**

Sec. 13. (a) All:

- (1) property owned by the development authority;
- (2) revenues of the development authority; and
- (3) bonds issued by the development authority, the interest on the bonds, the proceeds received by a holder from the sale of bonds to the extent of the holder's cost of acquisition, proceeds received upon redemption before maturity, proceeds received at maturity, and the receipt of interest in proceeds;

are exempt from taxation in Indiana for all purposes except the financial institutions tax imposed under IC 6-5.5 or a state inheritance tax imposed under IC 6-4.1.

(b) All securities issued under this chapter are exempt from the registration requirements of IC 23-2-1 and other securities registration statutes.

*As added by P.L.214-2005, SEC.73.*

#### **IC 36-7.5-4-14**

##### **Bonds; legal investments**

Sec. 14. Bonds issued under this chapter are legal investments for private trust funds and the funds of banks, trust companies, insurance companies, building and loan associates, credit unions, savings banks, private banks, loan and trust and safe deposit companies, rural loan and savings associations, guaranty loan and savings associations, mortgage guaranty companies, small loan companies, industrial loan and investment companies, and other financial institutions organized under Indiana law.

*As added by P.L.214-2005, SEC.73.*

#### **IC 36-7.5-4-15**

##### **Bonds; contesting validity**

Sec. 15. An action to contest the validity of bonds to be issued under this chapter may not be brought after the time limitations set

forth in IC 5-1-14-13.

*As added by P.L.214-2005, SEC.73.*

#### **IC 36-7.5-4-16**

##### **Transfers; failure to make; duty of state treasurer**

Sec. 16. (a) This section applies if:

- (1) a city or county described in IC 36-7.5-2-3 fails to make a transfer or a part of a transfer required by section 2 of this chapter; and
- (2) the development authority has bonds or other debt or lease obligations outstanding.

(b) The treasurer of state shall do the following:

- (1) Deduct from amounts otherwise payable to the city or town under IC 4-33-12 or IC 4-33-13 an amount equal to the amount of the transfer or part of the transfer under section 2 of this chapter that the city or county failed to make.
- (2) Pay the amount deducted under subdivision (1) to the development authority.

*As added by P.L.214-2005, SEC.73.*

#### **IC 36-7.5-4-17**

##### **Covenant with holders**

Sec. 17. (a) If there are bonds outstanding that have been issued under this article and are not secured by a lease, or if there are leases in effect under this article, the general assembly also covenants that it will not reduce the amount required to be transferred from the counties and cities to the development authority under section 2 of this chapter below an amount that would produce one and twenty-five hundredths (1.25) multiplied by the total of the highest annual debt service on the bonds to their final maturity plus the highest annual lease payments on the leases to their final termination date.

(b) The general assembly also covenants that it will not:

- (1) repeal or amend this article in a manner that would adversely affect owners of outstanding bonds, or the payment of lease rentals, secured by the amounts pledged under this chapter; or
- (2) in any way impair the rights of owners of bonds of the development authority, or the owners of bonds secured by lease rentals, secured by a pledge of revenues under this chapter;

except as otherwise set forth in subsection (a).

*As added by P.L.214-2005, SEC.73.*